

**Isla Verde Hotel Corporation d/b/a Hotel Holiday
Inn de Isla Verde and Asociacion de Empleados
del Casino del Holiday Inn de Isla Verde.
Cases 24-CA-4269 and 24-CA-4381**

December 4, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On June 15, 1981, Administrative Law Judge George F. McInerney issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order, as modified herein.³

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Members Fanning and Jenkins agree with the Administrative Law Judge's finding that the strike which occurred herein was in response to serious and aggravated unfair labor practices, but, for the reasons separately stated by them in *The Dow Chemical Company*, 244 NLRB 1060, 1061, fn. 8 (1979), they would find the strike to be protected activity regardless of the seriousness of Respondent's unlawful conduct.

We find it unnecessary to adopt the Administrative Law Judge's speculation that Respondent regarded Felix Ramos as more competent and versatile than other employees.

We note that, contrary to the Administrative Law Judge's statement that the record does not indicate that the union officers told Assistant Manager Jose Alvarez what they were planning to do, Alvarez testified they had told him their plans in the event they did not receive the bonus that night. We also note that the Administrative Law Judge inadvertently stated that Ruben Ramos testified he had seen Rafael Castillo on the night of September 12, 1980, talking with David Maza, when Ruben Ramos actually testified that Hector Rivera told him he (Rivera) had seen Castillo talking with Maza. These errors, to which Respondent excepted and which we correct accordingly, do not affect the Administrative Law Judge's conclusions or our adoption thereof.

² In the absence of exceptions thereto, we adopt *pro forma* the Administrative Law Judge's dismissal of the allegation that Respondent violated Sec. 8(a)(1) of the Act by offering a striking employee benefits if he returned to work. We also note that no exceptions have been filed regarding the Administrative Law Judge's conclusion that a no-strike clause may be implied from the parties' collective-bargaining agreement.

³ We believe that a broad remedial order is warranted in this case, under the standard of *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), inasmuch as Respondent has engaged in numerous serious violations of Sec. 8(a)(1), (3), (4), and (5) of the Act and has thereby demonstrated a general disregard for employees' fundamental statutory rights. Accordingly, we shall modify the Administrative Law Judge's recommended Order by inserting the broad "in any other manner" cease-and-desist language. We shall also correct a typographical error in the Administrative Law Judge's recommended Order, par. 2(a) of which inadvertently refers to "officer clerical employees" rather than "office clerical employees."

AMENDED CONCLUSIONS OF LAW

Substitute the following for the Administrative Law Judge's Conclusion of Law 5:

"5. By discharging and refusing to reinstate unfair labor practice strikers, Respondent has violated Section 8(a)(1) and (3) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn de Isla Verde, Carolina, Puerto Rico, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(g):

"(g) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act."

2. Substitute the following for paragraph 2(a):

"(a) Upon request, bargain with Asociacion de Empleados del Casino del Holiday Inn de Isla Verde as the representative of employees in the following unit admitted to be appropriate:

All croupier employees of Respondent employed at its hotel, exclusive of all other employees, office clerical employees, guards and all supervisors as defined in Section 2(11) of the Act."

3. Substitute the attached notice for that of the Administrative Law Judge.

We shall conform the Administrative Law Judge's Conclusion of Law 5 with his findings by inserting "discharging and" between "By" and "refusing."

We note that the Administrative Law Judge inadvertently omitted pars. 1(e) and 2(a) of his recommended Order from his notice. We shall modify the notice to conform with the Administrative Law Judge's recommended Order, as modified herein.

In agreeing with the Administrative Law Judge's make-whole remedy with respect to the discharged unfair labor practice strikers, we note that the remedy shall be computed according to the principles enunciated in *Abilities and Goodwill, Inc.*, 241 NLRB 27 (1979).

Member Jenkins notes that he would award interest on any backpay due based on the formula set forth in his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

After a hearing at which all sides had an opportunity to present evidence and state their positions,

the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT unilaterally discontinue our Christmas bonus and WE WILL NOT refuse to bargain about that bonus.

WE WILL NOT threaten or discharge unfair labor practice strikers who are on strike because of our unfair labor practices.

WE WILL NOT deny unpaid leave, issue written reprimands to, change shifts or days off, or deny the right to swap shifts of our employees because they engaged in union or protected activities, or filed charges or gave testimony under the National Labor Relations Act.

WE WILL NOT discharge or refuse to reinstate our employees or revoke condonations of their acts because they engaged in union or concerted activities, or filed charges or gave testimony under the National Labor Relations Act.

WE WILL NOT require our employees to sign waivers of statutory rights in order to obtain reinstatement.

WE WILL NOT in any other manner interfere with, coerce, or restrain our employees in the exercise of the rights guaranteed under the National Labor Relations Act.

WE WILL offer to Jose Crespo, Humberto Sanchez, Arnaldo Delgado, Geraldo Rodriguez, and Felix Ramos immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs without prejudice to their seniority or other rights and privileges and WE WILL make them, together with all employees who engaged in a strike on and after December 20, 1979, caused by our unfair labor practices, whole for any losses they may have suffered as a result of our unlawful discrimination, plus interest.

WE WILL remove from the files of Felix Ramos all records of disciplinary actions taken on January 26, July 2, and September 12 and 15, 1980.

WE WILL, upon request, bargain with the Asociacion de Empleados del Casino del Holiday Inn de Isla Verde as the representative of employees in the following appropriate unit:

All croupier employees employed at our hotel, exclusive of all other employees, office clerical employees, guards and all su-

pervisors as defined in Section 2(11) of the Act.

ISLA VERDE HOTEL CORPORATION
D/B/A HOTEL HOLIDAY INN DE ISLA
VERDE

DECISION

STATEMENT OF THE CASE

GEORGE F. MCINERNEY, Administrative Law Judge: This matter began with the filing of a charge in Case 24-CA-4269 on January 28, 1980, by Asociacion de Empleados del Casino del Holiday Inn de Isla Verde, herein referred to as the Union or the Charging Party.¹ The charge alleged that Isla Verde Hotel Corporation, d/b/a Hotel Holiday Inn de Isla Verde,² herein referred to as Respondent,³ the hotel, or the casino, had refused to pay a Christmas bonus, had refused to bargain with the Union, and had discharged 16 employees, all alleged to be unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, 29 U.S.C. §151 *et seq.*, herein referred to as the Act. The charge was amended on February 1, 1980, and on March 20, 1980, the Regional Director for Region 24 of the National Labor Relations Board issued a complaint alleging violations of Section 8(a)(1), (3), and (5) of the Act. Respondent duly filed an answer, denying the commission of any unfair labor practices.

Pursuant to notice accompanying the complaint, the matter came on to hearing before me in Hato Rey, Puerto Rico, on June 16, 1980. The hearing continued on June 17, 18, and 19, at which time counsel for Respondent, Ramos-Acosta, became ill, and, by agreement of all parties, the matter was continued to August 4, 1980. The hearing proceeded on August 5, 6, and concluded on August 7, 1980, again in Hato Rey, Puerto Rico.

Thereafter, on September 2, 1980, I received notice from the official reporter in this matter that certain tapes containing a portion of the testimony received at this hearing on August 4 had been stolen from the reporter and had not been recovered.

Before any action could be taken on this development, on September 2, the Union filed an additional charge in Case 24-CA-4381 against Respondent alleging further violations of the Act, some of which allegedly arose as a result of the appearance of a witness at this hearing. The charge in Case 24-CA-4381 was amended on September 16, 1980, and, on October 6, the said Regional Director

¹ The Charging Party herein was represented by Attorneys Leonardo Llequís and Jorge Farinacci. Attorney Farinacci appeared as counsel for the Charging Party on November 12, 1980. However, Attorney Llequís originally appeared as counsel for the Charging Party and there is no record of his withdrawal as counsel.

² The name of the Employer was changed at the hearing. This is the correct name.

³ Respondent herein was represented by Attorneys Francisco J. Ramos-Acosta and Rafael Buscaglia. Attorney Buscaglia appeared only as the signatory to the post-hearing brief filed on behalf of Respondent and as signatory on behalf of Respondent to a post-hearing motion. Attorney Ramos-Acosta originally appeared as counsel for Respondent and there is no withdrawal of his appearance in the record.

issued a complaint in Case 24-CA-4381, alleging that Respondent had violated Section 8(a)(1), (3), and (4) of the Act. Respondent filed an answer to this complaint again denying the commission of any unfair labor practices.

On October 14, 1980, counsel for the General Counsel in Case 24-CA-4269 filed a motion with me to reopen the record in Case 24-CA-4269 to reconstruct the missing testimony, and to consolidate that case with Case 24-CA-4381. This was agreed to by counsel for Respondent, and on October 20, 1980, I ordered that the record in Case 24-CA-4269 be reopened to receive the testimony which was lost, that Case 24-CA-4269 be consolidated with Case 24-CA-4381, and that the consolidated cases be heard beginning on November 10, 1980. The hearing proceeded in Hato Rey and Isla Verde, Puerto Rico, on November 10, 11, and 12, 1980.

Throughout this extended hearing, all parties had the opportunity to present testimony and documentary evidence, to examine and cross-examine witnesses, and to argue orally. Following the close of the hearing, briefs were filed by the General Counsel and Respondent. These have been carefully considered.⁴

Based upon the entire record in this case, including my observation of the witnesses, and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Isla Verde Hotel Corporation is a corporation organized under and existing by virtue of the laws of the Commonwealth of Puerto Rico. At all times it has done business as Hotel Holiday Inn de Isla Verde, and maintains its principal office and place of business in the city of Carolina, Puerto Rico, where it is engaged in the operation of a hotel and gambling casino. During the year prior to the issuance of the complaints herein, which period is representative of its annual operations, Respondent derived gross revenues of over \$500,000. In that same period Respondent purchased and caused to be transported and delivered to its Carolina, Puerto Rico, location foodstuffs, beverages, and other goods and materials valued in excess of \$50,000 directly from points located outside of the Commonwealth of Puerto Rico. The complaints allege, the answers admit, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaints allege, the answers admit, and I find that *Asociacion de Empleados del Casino del Holiday Inn de Isla Verde* is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background to the Strike

This case concerns only the relationships between Respondent and those persons employed as croupiers in the casino operated as a part of the Holiday Inn at Isla Verde. There is no dispute that the appropriate bargaining unit is, as described in the complaints herein: All croupier employees of Respondent, employed at its hotel, exclusive of all other employees, office clerical employees, guards and all supervisors as defined in Section 2(11) of the Act. Croupiers are the employees who actually run the three games offered by the casino: dice, roulette, and blackjack. The casino itself is modest in size compared to those in Atlantic City or Las Vegas, containing 3 roulette tables, 2 dice tables, 10 blackjack tables, and an unspecified number of slot machines.

Croupiers must, of course, be able to handle at least one of these games, and the more skilled and experienced can run two, or all three games. While the exact ratio of supervisors to rank-and-file employees is not defined in the record, it is evident that the ratio is very high, at slow times as high as one supervisor for each croupier. In addition to supervision by Respondent, the games are also closely watched by the Government of Puerto Rico. At all times there is at least one inspector from the Commonwealth Department of Tourism present in the casino.

Early in 1977 the croupiers organized themselves into an association, which is the Union in this case. Respondent voluntarily recognized the Union as the representative of the croupiers and the parties negotiated a collective-bargaining agreement.

This agreement between Respondent and the Union was executed originally on May 14, 1977, then supplemented by agreements dated November 8, 1978, and March 10, 1979. The documents appear unsophisticated, but upon analysis it is clear that the substantive content covers the basic areas of wages, hours of work, and other conditions of employment.⁵ There is a grievance procedure culminating in final and binding arbitration, conditioned, however, on the agreement of both parties to the arbitration portion of the procedure. The contract lacks a no-strike clause, although in general terms the Union agreed to be bound by all management rules, and employees were bound by the terms of the November 8, 1978, and the March 10, 1979, supplements "not, under any circumstances, abandon the table" and "not abandon work or the table of his own volition, without having been relieved or without being authorized by an official." (November 8, 1978 supplement, rules 9 and 16.) Respondent under the March 10, 1979, supplement was empowered to suspend or discharge any employee for "Abandonment, without just cause, of the table where work is being performed or without prior permission from the immediate superintendent"⁶ or for "refusal to

⁴ On December 22, 1980, all parties filed a motion to include in the record a stipulation of fact entered into on August 4, 1980. The motion is allowed.

⁵ There was some question about parts of the agreement setting out a seniority list, and dealing with internal union matters, but even those parts were accepted by management. It was apparent that the parties considered that this group of documents was the collective-bargaining agreement between them, and I so find.

⁶ Identified in this supplement as Luis Santiago Frilla.

work at the assigned table or work shift." (March 10, 1979, supplement, rules 2(G) and (I).)

In the November 1978 supplement, the parties agreed that "starting in April 1979 a work schedule with off duty rotating days every three months will be prepared." The purpose of this was an attempt to assure that weekend time off for employees in the casino's 7-day operation would be equally shared, by rotating days off every 3 months. This sounds like a relatively simple procedure, but in practice it did not work out that way. One of the union officers during this period, Jose Crespo Nieves,⁷ testified that the Union tried on three separate occasions during 1979, in April, August, and November, to work out schedules to implement this provision, but all three proposed schedules were unacceptable to the casino management.

After the second attempt to work out a mutually acceptable schedule the Union filed a request with the Commonwealth Department of Labor for the appointment of an arbitrator to enforce the contractual requirement for rotating days.⁸

Sometime in November, the testimony is not clear when, Crespo, who was then the president of the Union, together with Arnaldo Delgado Rodriguez, the general shop steward, met with the casino manager, Bienvenido Tosado Feliciano, to discuss proposed schedules worked out by the Union. According to Crespo, the only witness who testified about this meeting, Tosado rejected the schedule, became excited, and said he would not accept the schedule even if it were ordered by a court or the department of labor. At another point Crespo quoted Tosado as saying that he was not going to make the days rotational and that he was not going to do anything which was not for the benefit of the casino.

On December 4 Crespo, as president of the Union, filed a charge against Respondent with the Puerto Rico Labor Relations Board alleging a violation of the collective-bargaining agreement since April because of the Employer's failure to implement the rotating days schedule.

During December, the Union and management had other discussions over concerns of the employees with regard to uniforms,⁹ the annual Christmas party, and a Christmas bonus.¹⁰ With respect to the last issue, the evidence shows that there is a law in the Commonwealth which requires the payment of a Christmas bonus to employees of employers who have enjoyed a profitable year. There is some evidence that Respondent did not make a profit in 1979, but that is really not at issue here. Bonuses were paid to employees in 1977 and 1978. The discussions on these issues were apparently productive and in a letter dated December 6 management announced that uniforms would be supplied, a Christmas

party would be held, and steps were being taken to pay a Christmas bonus to all those entitled to receive a bonus.

Respondent did proceed with plans to pay the Christmas bonus. Tosado testified that it was his intention to pay the bonus at the Christmas party which was held at another hotel on December 18. However, Tosado was informed by the hotel's general manager, David Maza San Miguel, that there was no money available on that date. Tosado informed several employees at the Christmas party that the bonus would be paid on December 20 or 21.¹¹ Other evidence shows that management intended to give the bonus at 8:30 p.m., the time when the shifts changed in the casino, on December 21. Carlos J. Luna, the hotel's personnel director, testified that Maza wanted to meet with the employees concurrently with the giving of the bonus to explain to them the hotel's economic problems.¹²

However, on December 20, Respondent received notice from the Commonwealth Labor Relations Board of the charge which had been filed on December 4.

This was the state of things on the afternoon of December 20.

B. The Strike

Luna came into the casino between 1:30 and 2 p.m. on December 20 and spoke to Miguel Barbosa Figueroa, the Union's steward on the day shift. Luna and Barbosa gave sharply different versions of this conversation. According to Barbosa, Luna had with him a copy of the charge from the Commonwealth Labor Relations Board. He showed Barbosa the document and asked if it had been filed by the Union. Barbosa replied that it had, and that the Union was going to take it "all the way." Luna then said that Maza was angry and that he was not going to give the employees the Christmas bonus.

Luna agreed with Barbosa on the time and place of the conversation, but testified that he had two documents with him, the charge and the request for arbitration, referred to above, which had been filed on November 9 with another agency of the Commonwealth. Luna said that he told Barbosa the bonus would be distributed on the next night at the shift change. Luna then said he showed Barbosa the two cases, the arbitration request and the charge, and asked whether Barbosa knew of this duplication. Barbosa replied that he would speak to the Union's directors about the matters.

In view of what happened immediately after this conversation Luna's version of the event is totally improbable and unbelievable. Barbosa's version is wholly in accord with his subsequent actions. Further, based on my observation of his demeanor, I found Barbosa to be a completely credible witness. Luna, here and in his testimony on other aspects of these consolidated cases, appeared to me to be guarded and less than candid. Thus I credit Barbosa's version of this conversation.

⁷ Following the local custom I shall give the full name of each witness, if the full name is given, and when it first appears. Afterwards I shall refer to the witnesses by their patronyms.

⁸ This was not filed until November 9, just before the third attempt to work out a schedule. The matter did proceed to arbitration but since I did not consider the arbitrator's decision material to the issues here I rejected the decision when offered as an exhibit.

⁹ Croupiers were required to wear evening clothes while on duty.

¹⁰ The bonus would have amounted to about \$200 for a person who had worked for the whole year, and proportionally less for those who had worked less than a full year.

¹¹ I found Tosado to be a credible witness. He was no longer employed by the casino when he testified, and he had severed his other business relations with Maza.

¹² I had some problems with Luna's credibility, as noted *infra*, but I do not find this recital of Respondent's intentions to be inconsistent with other facts in the record.

As soon as Luna left the casino Barbosa called Delgado, the general shop steward and a night-shift employee, at his home.¹³ Delgado in his turn, contacted Crespo and Union Vice President Humberto Sanchez. These three drove immediately from their homes to the casino. On arriving there, they asked Assistant Manager Jose Alvarez if Barbosa could be relieved from duty to consult on the matter. Alvarez agreed and the four union officials went to the hotel's main office in order to talk to Maza. On hearing of their request, Maza came to the door of his office and told them he had no time to talk to them, and that they should talk to the casino manager. They returned to the casino and again spoke to Alvarez, since the manager, Tosado, was not there. Alvarez tried to contact Tosado but could not, then told the employees to wait for Tosado to come in.

Around 2:30 or 3 p.m. Delgado testified that he, Crespo, and Sanchez had a conversation in the parking lot of the hotel.¹⁴ They decided that, if management did not give the bonus and refused to speak about it, they could stage a "hands down" stoppage.¹⁵

Crespo, Sanchez, and Delgado then waited for Tosado at the casino until about 6 o'clock, then went home to eat and change their clothes before reporting back to work at 8:30. There is no indication in the record that the union officers told Alvarez what they were planning to do, but Delgado did admit that they told other employees, and it is clear from Alvarez' own testimony that he was aware that strike action was a real possibility. In fact Alvarez located Tosado some time before 8 o'clock and told him of the situation. Tosado told Alvarez to hold the day-shift supervisors beyond the end of their shift in order to cover the gambling tables in case of an emergency.

Tosado finally arrived at the casino about 10 that night. He spoke to Alvarez and Santiago, the assistant manager in general charge of personnel matters. According to Tosado he learned from Alvarez and Santiago that the situation was unchanged.

At that point Tosado left the casino and went to see Maza. Tosado and Maza discussed the fact that the bonus had been promised, and also their impression that if they gave the bonus that night, under pressure, they would be establishing an undesirable precedent. They agreed that in those circumstances they would no longer have control of the casino. Thus Tosado and Maza decided that they would not give the bonus that night, but if the employees did not strike they would give the bonus the next day.

With this decided, Tosado returned to the casino around 10:30 p.m. and told Santiago to inform the Union

that they were not going to give the bonus that night.¹⁶ Tosado did tell Santiago that, if the employees did not strike, they would receive the bonus on the next day. However, he instructed him not to tell this to the employees.

Santiago then called Sanchez and Crespo into the casino office and informed them that there was no Christmas bonus and that Tosado had nothing to discuss with them.

At this point Sanchez and Crespo left the office and proceeded into the casino. On the way Sanchez encountered Tosado and asked whether he was going to pay the bonus or not. Tosado replied that he was not, emphasizing the point with an all-purpose, apparently untranslatable, Spanish epithet. Sanchez and Crespo then proceeded from table to table in the casino, instructing the employees that the "casino is stopped," but not to abandon the tables.¹⁷ The union leaders were, obviously, trying to implement a sit-down strike in the casino. These aims were thwarted by management, as Tosado gave orders that supervisors move in on the tables, relieve the employees, and order them to leave the casino. This order to leave was also conveyed to employees who were off duty in the croupiers' restroom.¹⁸ There were no problems and no incidents. The croupiers all left the casino and went outside the hotel, where they established a picket line. Although Respondent maintained in later communications to the strikers, and in its answer to the complaint in Case 24-CA-4269, that the employees had abandoned the tables, leaving chips and money unguarded, there is no evidence in this record that any employee left his table unguarded, or that anyone left his table except by the order of a supervisor. Rafael Rossi Soto, a witness for Respondent, testified that Sanchez had told him to leave the casino. Then he asked Tosado what he should do.¹⁹ Tosado replied that he should do what the shop steward had instructed, that he alone could do nothing. It would, indeed, be inconsistent with the Union's plan to stage a sit-down strike to abandon the tables, and any departures by employees from their tables was the result of management's prompt response to the work stoppage. Thus I cannot find that any employee willfully abandoned his table, and, further, I find that the attempt to stage a sit-down strike, whatever the intention of the

¹³ I have relied on the undenied and mutually corroborative testimony of Delgado, Sanchez, and Crespo for my findings on the events of the afternoon and early evening of December 20.

¹⁴ It is not clear whether this was before or after they met with Alvarez.

¹⁵ At the hearing the translation was, as stated, "hands down." However, Delgado's affidavit, in evidence, translates the words *para de brazos caidos* as a "sit-down strike." The latter translation of these words is corroborated by Simon and Schuster's International Dictionary, English/Spanish, Spanish/English, Simon and Schuster, New York, 1973, and Appleton's New Cuyas, Prentice-Hall, Inc., Englewood Cliffs, New Jersey, 1972. Accordingly I find that the agreement was to hold a sit-down strike at the casino, to force management to grant the bonus.

¹⁶ Tosado explained that he used Santiago as an intermediary because the latter was named in the contract as the management representative responsible for dealing with the Union.

¹⁷ The only dissent to this evidence was the testimony of Rafael Rossi Soto, who could have been mistaken about what Sanchez said to him. Carlos Emmanuelli, a government inspector on duty that night, testified that there were not many people in the casino that night, even though it was at the beginning of the tourist season. Emmanuelli stated that there were three out of nine blackjack tables open, one out of three roulette tables, and one out of two dice tables.

¹⁸ The evidence shows that the croupiers work, roughly, a schedule of one hour at the tables and one-half hour off. Thus approximately one third of the employees on a given shift would be off duty at all times during their shift. There are some variations to this which are not material here.

¹⁹ Rossi was a new employee who had not yet joined the Union and felt no loyalty toward it.

Union, was forestalled, and that such a strike did not, in fact, occur.²⁰

In subjecting these facts to analysis, it is first necessary to determine whether the employees who went out on strike on the night of December 20 were engaged in protected concerted activity or whether their action was unprotected, subjecting them to disciplinary action by Respondent.

Initially there is no question that the discussions about the rotating days off constituted protected activity in pursuance of the employees' concerted aims as expressed in the November 1978 amendments to the collective-bargaining agreement. There is no indication in the record that, at least up to November 1979, the failure to reach agreement on this matter was due to any factor other than the difficulty of implementing the mechanics of the schedule. That this difficulty produced feelings of frustration in the Union is evident from the request for arbitration filed on November 9 by the then president, Ruben Ramos Perez. These frustrations may also have led to the resignation of Ramos in November and his replacement by Crespo.

Such a change in leadership, particularly if the change is impelled or motivated by dissatisfaction with the policies of the prior officers and impatience with the results achieved by those officers, is almost inevitably accompanied by a higher level of militancy and a more aggressive approach to the problems at hand. Thus in late November Crespo testified about expressions of anger and impatience by Tosado in the course of their discussions on uniforms, the Christmas party, and the Christmas bonus, as well as further discussions on the rotating days off issue.²¹ In this last situation Crespo fared no better than his predecessor, Ramos, in reaching a solution. Crespo then tried a new tactic in filing a charge with the Puerto Rico Labor Relations Board on December 4.²² While the substance of this charge may have overlapped, or even duplicated the matter included in the November arbitration request, there can be no question that this was also protected concerted activity.

There is no direct evidence in the record on when the Respondent was notified of the charge. There is no indication on the charge itself, nor on the interview notice from the Puerto Rico Labor Relations Board, that copies of those documents were sent to the Employer. It is logical to assume, and I find, that notice was given to Respondent, and from the testimony of Luna I infer and find that whatever form that notice took was received by Respondent on December 20.

I have already found that Respondent's reaction to this charge, as dictated by Maza and relayed by Luna to Barbosa, was to unilaterally determine that the Christmas bonus would not be paid. I find that this action constituted a violation of Section 8(a)(1) and (5) of the Act.

²⁰ Accordingly, cases such as *Fansteel Metallurgical Corp. v. N.L.R.B.*, 306 U.S. 240 (1939), cited by Respondent in its brief, are inapplicable to this case.

²¹ Crespo's testimony on this is so sketchy and conclusionary that I cannot make a finding that Tosado showed animus or hostility toward the Union or its officers. His comments could reflect only the normal give and take of labor relations generally.

²² There is testimony that under Puerto Rican law violations of the terms of a collective-bargaining agreement are violations of that law.

The next event in the chain was the meeting in the parking lot between Crespo, Delgado, and Sanchez where it was decided that the Union would strike if the bonus were not paid that night, and if management refused to discuss the matter of the bonus. The substance of this decision, at least that part dealing with the possibility of a strike, was conveyed to Alvarez, who in turn alerted Tosado.

The evidence shows that Respondent was aware of the nature of the problem, the seriousness of the situation, and the potential disruption of the business of the casino at the beginning of the tourist season. The record is nearly barren of evidence tending to show any actions by Respondent's agents in the period from mid-afternoon until 10 o'clock that night, or Respondent's motivations in that time period. It is not unusual for the casino manager to arrive at the casino as late as 10 p.m. The casino operates from 1 p.m. to 4 a.m. Later testimony from one of Tosado's successors would indicate that the manager is present off and on during the early hours of operation, but he apparently arrives late and remains until closing time. Thus I can raise no inference from the fact that Alvarez could not reach Tosado until 7 or 8 p.m., and that the latter did not actually arrive at the casino until after 10.

It may well be that Respondent had no clear or definite plan of action during this period. There is no explanation of Tosado's whereabouts or activity. There is no evidence that anyone had talked to Luna, whose announcement to Barbosa early in the afternoon had precipitated the whole thing. Luna testified that he was in his office until 5 p.m. when he left for the day. I did not find Luna to be a credible witness but he was the personnel manager for the hotel, and there is no indication that Alvarez, Tosado, or anyone else contacted him either before or after he left work for the day.

By 10 p.m., then, the stage was set for a confrontation between the Union and Respondent. At that time Tosado came into the casino, verified the status of the situation by conferring with Alvarez and Santiago, and left to consult with Maza. Tosado and Maza were apparently under the impression that the Union would strike if the bonus were not given that night. Accordingly they decided to test the Union by precipitating the threatened confrontation. They determined that they would not pay over the bonus that night, but, if the strike did not occur, they would pay it the next day.²³

Tosado then determined that he would notify the Union of the first part of this decision, that the bonus would not be paid, but not the fact that it would be paid on the next day if there were no strike. In this decision I find that Tosado not only intended to test the Union's will and strength, but also, by determining not to discuss the matter with the Union's representatives in the terms decided on by Maza and himself, flung down a gauntlet

²³ There is no explanation of why Maza would have instructed Luna to tell the Union that the bonus would not be paid at all because of the filing of the charge with the Puerto Rico Labor Relations Board, then changed his mind and agreed with Tosado that the bonus would be paid on December 21 if there were no strike. Maza did not testify, and did not deny that he gave the orders or made the statements attributed to him by others.

to the Union, and dared them to test their resolve against his.

As a final indication of Tosado's provocative and contemptuous attitude toward the Union and its officials, I note that even after the message that there would be no bonus was delivered by Santiago, Sanchez tried once more to ask Tosado about the bonus, only to be peremptorily and crudely rebuffed.

In these circumstances, I find that Tosado's actions constitute not only refusal to bargain over Respondent's unilateral refusal to pay the bonus, but also total willful rejection of the collective-bargaining process. I find his refusal to bargain to be a violation of Section 8(a)(1) and (5) of the Act.

As has been noted, the collective-bargaining agreement between Respondent and the Union does not contain a no-strike clause. It does contain an arbitration provision which is operative on the agreement of both parties to submit an issue to arbitration. The evidence in this case shows two instances where the parties have proceeded to arbitration, and no instance where the Union has requested, and Respondent has refused, to arbitrate. Accordingly the arbitration clause in the contract may be taken to be the *quid pro quo* for an agreement by the Union not to strike.²⁴ A no-strike clause may also be inferred from the agreements by individuals not to abandon their work or work stations contained in the contract. There is no question in my mind that a refusal to give the bonus in this case would have been an arbitrable matter.²⁵ Arbitration of a dispute over the bonus would have accorded with Federal policy as enunciated by Congress²⁶ and affirmed by the courts²⁷ favoring arbitration of labor disputes. These authorities and this policy would tend to the conclusion that a strike occurring in these circumstances, while in protest against unfair labor practices, would not constitute protected activity by the employees where the grievance and arbitration route could have been followed.

This, however, presents a different picture than that considered by the Board in accordance with the principles outlined above, *The Dow Chemical Company*, 212 NLRB 333 (1974), cited by Respondent in its brief. Here the unilateral change imposed by Respondent was effectuated in retaliation for the employees' exercise of their right to file a charge with the Puerto Rico Labor Relations Board.²⁸ In addition, the decision in *Dow Chemical* shows that there was considerable discussion between the union there and the employer between the announcement by the employer of the unilateral change in hours and the implementation of that change. Here Respondent through the casino manager, Tosado, absolutely refused

to discuss the matter with the Union, in violation of the grievance procedures of the contract,²⁹ and the national labor policy.³⁰

It is my view that the strike which occurred in Respondent's casino was in response to unfair labor practices so serious as to be "destructive of the foundation on which collective bargaining must rest."³¹ Respondent's announcement that the bonus would not be granted because the Union had filed a charge can only have demonstrated to employees the futility of their exercise of legal rights under the law of the Commonwealth, and the absolute refusal of Tosado to discuss the matter, as he was required under the contract, vouchsafed to the employees the attitude of Respondent toward the contract and its obligations thereunder. Respondent is ill cast, now, in the role of the champion of those very contractual principles it so cavalierly disregarded on the night of December 20, 1979.³²

Accordingly, I find that the strike which occurred on December 20 was in protest against serious and aggravated unfair labor practices by Respondent. Indeed, in my view nothing shatters the foundation on which collective bargaining is based so thoroughly and completely as an utter refusal to engage in collective bargaining. I find that the strike was protected and that the actions of the employees in striking were protected concerted activity.

C. The Effects of the Strike

As noted previously, on leaving the casino the striking employees established a picket line in front of the hotel. On the next day, December 21, the day-shift employees joined the strike beginning at 1 p.m.

Also on December 21 the casino management composed two form letters. The first was directed, individually, to the employees who had walked out on the previous evening and stated that the addressee had "abandoned" his work leaving large amounts of valuables on the gambling table. As a result each of these employees was discharged. The second letter went, again individually, to the day-shift employees who had joined the strike on December 21. The addressees were "required to immediately report" to their regular work schedule. Failure to report would allow management to "take all those measures that are deemed appropriate."

The strike continued, and on December 26 management directed another form letter to the day-shift employees informing them that they had not reported to work as directed on December 21 and had offered no excuse or justification for such failure to report. The employees were directed to report to work at 12:30 p.m. on December 28 on penalty of suspension, since such failure to report would, in management's view, constitute abandonment of their employment.

²⁴ *Textile Workers Union of America, AFL-CIO v. Lincoln Mills of Alabama*, 353 U.S. 488 (1957).

²⁵ *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

²⁶ See the preamble of the Act.

²⁷ See, e.g., *Gateway Coal Co. v. United Mine Workers of America, et al.*, 414 U.S. 368 (1974).

²⁸ Respondent understandably may have been annoyed by the prospect of being forced to litigate the same factual matter in two different fora, but this does not give it license to react in the manner chosen.

²⁹ See original contract of May 14, 1977 (English translation, p. 1), and March 10, 1979 supplement (English translation, p. 1 of supplement).

³⁰ National Labor Relations Act, as amended, Sec. 8(d).

³¹ *Mastro Plastics Corp. v. N.L.R.B.*, 350 U.S. 270 (1956); *Arlan's Department Store of Michigan Inc.*, 133 NLRB 802 (1961).

³² See *The Dow Chemical Co.*, 244 NLRB 1060 (1979).

With one exception, none of the employees returned to work until the Union abandoned the strike on January 5. This employee, Rafael Rossi, stated that he called Tosado on December 22. Tosado arranged to have Rossi picked up and driven in to the hotel. Rossi lived in the hotel with free room and board, and continued to work there while the strike lasted. He testified that Tosado promised to raise his salary after the strike was over, but this happened after he had returned to work and cannot be considered an inducement to return.³³

There was another meeting at the casino on December 22 attended by Tosado, Santiago, Alvarez, and Felix Ramos Hernandez, an employee who worked on the day shift and also served as alternate shop steward for the Union. Ramos testified that Santiago called him on December 22, asked him to come back to work, and began to talk about reinstating some employees. Ramos would not talk about these matters, but agreed to come to the casino. The meeting among Ramos, Tosado, Alvarez, and Santiago took place at 10:30 p.m. According to Ramos, Tosado told him that if he came back to work he would have profit sharing and hotel protection while working. If Ramos came back he could stay in the hotel and everything would be all right. Ramos replied that it would be "immoral" to do that and, apparently, the meeting ended.

There was no further testimony or evidence on this meeting. Neither Tosado nor Alvarez was asked about it, and Santiago did not testify. The General Counsel amended the complaint at the opening of the hearing, alleging, among other things, that Respondent had violated Section 8(a)(1) of the Act by offering "a profit sharing plan and other benefits and improvement in . . . working conditions and terms of employment." It seems to me that Ramos' description of the meeting of December 22 falls short of proving the violation alleged. Even if I were to credit Ramos in this instance, and I do have some questions about his credibility, as will be discussed later, I do not believe that such a vague and general statement about profit sharing can furnish me with a basis for a finding that Respondent violated the Act in this regard.

The letters of December 21 to the night-shift employees, and December 26 to the day shift are another matter. Since I have found that the strike was in protest against substantial unfair labor practices by Respondent, and that the strike was protected concerted activity, the conduct of Respondent in discharging the night-shift employees as of December 21 and the day-shift employees as of December 26 constituted further violations of Section 8(a)(1) and (3) of the Act.³⁴

Additional post-strike developments show that after the strike was called off on January 5 there were negotiations between the Union and management leading to the return of the day-shift employees to work in mid-Janu-

ary.³⁵ Further negotiations resulted in the return of the night-shift employees except for Crespo, Sanchez, and Delgado.

As a condition of their return, however, the night-shift employees, according to the credible testimony of Julio Bonet Harris, were required to sign a letter accepting the hotel's offer to return, and also containing a "voluntary" waiver of "any claim that . . . [the Union] . . . or any other person may be making on my behalf, both with the Agencies of the Commonwealth of Puerto Rico as well as the Federal Government." Bonet's testimony is corroborated by a letter identical to his letter to management executed by Edwin Feliciano Lopez.³⁶ Accordingly I find that Respondent required that employees waive their rights before this Agency, the National Labor Relations Board, as well as agencies of the Commonwealth, as a condition to their return to work. I find this to be a further violation of Section 8(a)(1) of the Act.

D. Incidents Involving Felix Ramos

1. The January 26, 1980, incident

Up to now this Decision has been concerned with the incidents leading up to the strike, the strike itself, and its aftermath. Henceforth I shall be concerned with a series of incidents concerning a single individual, Felix Ramos. The first of these incidents occurred on January 26, 1980, and was included in the original complaint in Case 24-CA-4269. The others took place in June, July, and September 1980 and constitute the substantive allegations in Case 24-CA-4381.

In his extensive testimony, given in this proceeding, Ramos revealed himself to be a person of intelligence and personal charm. He must also possess a high degree of competence as a croupier, as will be seen by the fact that Maza granted him a unique and special schedule, premium days off, and an unpaid leave of absence. Ramos did, however, have a tendency to tone down and to minimize the vehemence of his words and actions in his two serious confrontations with management. Thus Ramos' testimony while generally credible, will be evaluated against the testimony of others where conflicts exist, in the light of these observations.

Ramos first appeared in this case when he was called by Santiago on December 22 and later that night went to the casino to talk with Santiago and Tosado.³⁷ There is no evidence in the record concerning whether Ramos participated in the negotiations leading up to the return to work of the day shift, but he was appointed as alternative union steward by Crespo after the strike ended on

³³ There is no allegation in the complaint concerning this incident and, in any event, it was not fully developed or litigated. Therefore I make no finding whether it constitutes a violation of law.

³⁴ See, e.g., *Pacemaker Yacht Co., a Division of Mission Marine, Inc.*, 253 NLRB 828 (1980).

³⁵ With the exception of Geraldo Rodriguez Rivera, who was held responsible by management, together with Crespo, Sanchez, and Delgado, of having instigated the strike. These four were never offered reinstatement.

³⁶ See G. C. Exhs. 11A and 17A. Lopez, however, testified that his "fellow employees" told him that this type of letter would allow him to return to work. This does not explain the fact that the letters are identical and leads to my conclusion that in fact management prescribed the form the letters were to take.

³⁷ This would indicate not only that Ramos was a valued employee, but that he was considered by management as influential with his fellow employees.

January 6, and he did return to work with the day shift about that time.

On January 26, at 3 or 3:30 in the afternoon, Ramos noticed that a supervisor was working at one of the roulette tables.³⁸ Ramos was not on duty at the time but pursuant to his perception of his obligation as alternate steward he approached the assistant manager of the casino, Pedro Padin, and asked if he could talk to him about a problem at the roulette table. Padin replied that he had no time to talk to Ramos, adding that he had to wait for additional management personnel to arrive before he would have time to speak to Ramos. The latter persisted, saying that the problem existed then, and not later in the evening. Padin then ordered Ramos to go to the croupiers' restroom.³⁹ Ramos obeyed the order and went to the restroom⁴⁰ where he discussed the matter with Alberto Guzman Rivera, the treasurer of the Union. Guzman advised Ramos to speak to the gambling inspector about it. Ramos left the restroom and told the inspector, Carlos Troche, about the supervisor working the roulette table. Troche then went to Padin and told him that the employment of supervisors to work the gambling tables was contrary to the regulations of the Tourism Department. Troche showed Padin the regulation and Padin said he would discontinue the practice.

The incident did not end there. Later in the afternoon Padin and Troche went to the restroom where Ramos and Guzman were taking their break.⁴¹ Padin asked Ramos why he had complained to the inspector. Ramos answered that Padin had no time to talk to him about the incident and he talked to Troche as part of his duties as shop steward. Padin then said that he did have time to speak to the government inspector but he did not have time to speak to Ramos until 8 p.m. Padin's voice was raised at this time and he was pointing his finger at Ramos.

At 8 o'clock that evening Ramos had finished work and was talking to another employee, Ruben Ramos. Ruben Ramos was working a blackjack table but there were no players at the time.⁴² Padin came up to them

and told Felix Ramos that he had time for him now and for them to go to the office. Felix Ramos replied that he had nothing to discuss because the matter had been remedied. He added that he was going to wait for Tosado. In the meantime he was going to watch out for the interests of the employees in his role as shop steward. Padin then banged his fist on the blackjack table and told Felix Ramos that he had to go to the croupier's restroom. Felix Ramos replied that he was not going to leave the casino because he was carrying out his functions as shop steward.⁴³ He then walked toward an empty table at the back of the casino. Padin followed him and said that Ramos had two alternatives, he could go to the restroom, or he could resign. Ramos said he was not going to resign, whereupon Padin suspended him on the spot.

The suspension was originally supposed to be for 7 days, but on the next day Ramos was told by Guzman that the suspension was converted to a discharge. On January 28 Padin addressed a memorandum entitled "Justified Discharge" and explaining that Ramos was discharged for "insubordination and lack of respect" toward Padin. However, the incident outlined in the memorandum, which is identical to the incident as described by Padin in his testimony, bears little relation to the several incidents described in the credible testimony of Felix Ramos, Troche, Guzman, and Ruben Ramos. Even so, the incident as described by Padin and set out in the January 28 memorandum shows that the discharge was based at least in part on Ramos' insistence on performing his function as a union steward. Further, contrary to the statement in the January 28 memorandum that a discussion of grievances concerning the casino in the gambling area violated the grievance procedure of the collective-bargaining agreement, I find that the agreement contains no such provision. It would appear, rather, that Ramos was entirely correct in approaching Padin, as he did, to discuss the grievance. Ramos' action in pursuing the matter with the inspector also appears to be proper, particularly since the inspector immediately went to Padin and told him to stop the unauthorized use of a supervisor. Since I do not credit Padin's testimony that Ramos was rude and disrespectful, I find that the January 28 memorandum shows that Ramos was discharged for invoking the grievance procedure, and for complaining about casino operations to the inspector from the Department of Tourism.

Accordingly, based on the credible evidence on this incident I find that Ramos complained about a violation of the parties' practice and the regulations of the Tourism Department. Padin's conduct when he came into the croupiers' restroom shows his resentment not at Ramos' conduct in seeking to discuss the irregularity at the roulette table, but at Ramos' action in complaining to the gambling inspector. Ramos' discharge thus was a violation of Section 8(a)(1) and (3) of the Act. See *Interboro*

³⁸ There is nothing in the contract about a supervisor working at a table, but there was no question raised by Respondent that the practice was not contrary to the parties' understanding.

³⁹ Apparently the casino rules require off-duty croupiers to take their break in the restroom.

⁴⁰ There is a wide variance in the version of this conversation between the testimony of Ramos and Padin. In the latter's testimony, he described Ramos as screaming at him in the middle of a crowded casino at the height of the tourist season. However, Padin's testimony was confused, mixing up this incident in the afternoon with one which happened later in the evening. My own observations of Ramos, and the testimony on an incident in September 1980 indicate to me that he may have been more forceful in pressing his grievance than he was willing to admit, but his testimony is substantially corroborated by that of the Commonwealth's gambling inspector, Carlos Troche Santiago, who was present. Respondent brought forth only Padin, whose testimony I find to be unreliable. Therefore I credit the broad outlines of Ramos' testimony and these findings are based on that testimony.

⁴¹ The testimony of Ramos on this part of the day's events was corroborated by Guzman and undenied by Padin. I accept Ramos' version as credible and logical.

⁴² I have made these findings on the mutually corroborative stories of Ruben and Felix Ramos. Padin, as I have noted, confused this incident with the earlier exchange in the casino. I do not credit his testimony in this matter.

⁴³ In an affidavit which was given in the course of the investigation of this case and which was received in evidence Felix Ramos stated that there were no other union officers in the casino at that time. However, in his testimony at the hearing he said that Barbosa and another steward named Roman were there that evening. This discrepancy may be explained if these other stewards were in the restroom at that precise time. This is a logical inference which I find acceptable.

Contractors, Inc., 157 NLRB 1295 (1966); *Varied Enterprises, Inc. d/b/a Private Carrier Personnel*, 240 NLRB 126 (1979).

2. Incidents in June and July 1980

After his discharge, in March or April,⁴⁴ Ramos was called by Attorney Leonardo Llequis. Llequis informed Ramos that the Union and Respondent had reached an agreement on the reinstatement of the night-shift employees who had struck on December 20,⁴⁵ as well as Ramos' situation. Ramos was told to go to the hotel and talk to General Manager Maza. At this meeting Maza told Ramos that the "punishment" had been unjust and that he knew that Ramos was a capable and cooperative employee. Maza further stated that Ramos could have his choice of shifts and days off and that he could take a leave of absence whenever he wanted if he returned to work.

At this time Ramos had another job, as a designer with the American Fire Sprinkler Corporation in San Juan. His hours were flexible, and required that he work from 6 or 7 a.m. until early in the afternoon. Thus on his return to work at the casino, he chose the hours from 4 o'clock in the afternoon until midnight, with Saturdays and Sundays as his days off. These unusual considerations lead me to conclude, as I have above, that Ramos was a versatile and highly regarded employee.⁴⁶

On June 18, 1980, Ramos testified in this proceeding. Shortly after that he requested from Pedro Padin a leave of absence to run from July 5 through November 3.⁴⁷ Padin told him to put the request in writing, which he did under date of June 26, 1980. On receiving the request Padin left the casino to consult with Maza, then returned, and said that the leave was not approved because of "problems with other leaves." Padin then added that if Ramos had not testified (at this hearing) he would have "enjoyed the favor" of management, but that he had gravely injured Respondent by his testimony. Padin gave the leave request back to Ramos marked "Not approved."

Although Padin did not deny this conversation he did testify that the reason Ramos was not granted the leave was that Ramos had been given many privileges, more than other employees. Luna testified on this matter, but said that the reason the leave was not granted was because Ramos had been granted a leave of absence on another occasion and that in June they "were not in a position to give him another."

Padin's remarks to Ramos that the reason he was not being granted the leave were clearly discriminatory. Thus I find that Respondent's action in denying Ramos leave without pay in June 1980 is a further violation of Section 8(a)(1), (3), and (4) of the Act.

⁴⁴ Ramos was uncertain about this date. At one point he said it was in March, at another time he recalled the date as April 27. Since I have found that the striking night-shift employees returned to work in March, I find that the events related here also occurred in March.

⁴⁵ With the exception of the four union officers mentioned above.

⁴⁶ See also the letter from Carlos Luna containing a laudatory recommendation of Ramos and dated February 7, 1980.

⁴⁷ I rely for the findings of the leave request on the credible testimony of Felix Ramos. Padin did not testify on this issue.

On the same night, after Ramos had his conversation with Padin about the leave, he left the hotel about 11. As Ramos related the story, a woman who was a guest at the hotel stopped him in the lobby and asked him some questions about the games. He answered her and they both walked toward the exit. Ramos held the door for the guest, but did not remain with her after they were outside the hotel. He went to his car which was in the hotel parking lot.

This incident was observed by one of the hotel's security force and a report that Ramos had left the hotel in the company of a woman guest was handwritten by the security office and forwarded to Carlos Luna. There is no written rule in evidence in this case which prohibits casino employees from leaving the hotel with guests. There are rules requiring croupiers to exercise the utmost discretion concerning guests and their business. Thus I credit Luna's testimony that there was an unwritten rule against employees' leaving the hotel in the company of guests. However, Luna also testified that his customary procedure in matters of this sort⁴⁸ was to check out the report, then to hear the employee's side of the story before issuing a warning or other disciplinary measure. In this case Luna admitted that he did not check the report from the security office, did not make any independent investigation, and did not ask Ramos for an explanation. He summoned Ramos to his office, confronted him with the security office report and told him he had violated the rules "in a crass form."

This interview was followed on July 2 by a memorandum from Luna to Ramos entitled "Last chance" in which Luna described the incident with the guest⁴⁹ and noting that this violated the rules "in a flagrant manner." The memorandum went on to state that this was Ramos' last chance, and that he would be discharged for any further violations of the rules.

In this case I credit Ramos' version of the incident, but I can understand how the fact that Ramos opened the door of the hotel for the guest, then followed her out the door, could be misinterpreted by a security guard. Thus I can find nothing out of the ordinary in the fact that the security office reported the incident to Luna. I have already found that the rule alleged to have been violated here, while not contained in the rules of conduct for croupiers, was consistent with the tenor and spirit of those rules. Luna offered no explanation in this case as to why he departed from his usual practice in disciplinary cases of checking the report, investigating the incident, and listening to the explanation of the accused employee. By his own testimony, he summoned Ramos to his office, showed him the report from the security office, and issued the warning.

In view of the absence of any reason for this variance from custom, and in consideration of the timing of the warning less than 2 weeks after Ramos had first testified

⁴⁸ Luna testified that he had taken disciplinary action against other employees for the same infraction, but never against a croupier.

⁴⁹ The English translation of the memorandum described the incident as having occurred on June 23. However the Spanish version states that it occurred on June 26. The report of the security office likewise places the date on June 26.

in this case, and particularly in the light of Padin's remarks to Ramos about betrayal of Respondent through that testimony, I find that the variance from Luna's usual practice, and the severity of the warning⁵⁰ flowed from Respondent's resentment at Ramos for his prior testimony in this case. Therefore I find that this warning is an additional violation of Section 8(a)(1), (3), and (4) of the Act.

3. Ramos' shift change and second discharge

At the resumption of this hearing on August 4, 1980, the General Counsel amended the complaint in Case 24-CA-4269 to allege the violations of the Act which have been discussed in the section of this Decision just concluded. Felix Ramos testified concerning these allegations at the resumed hearing. Ramos testified that he took some vacation time in August and returned to work on September 1.

In the meantime, on August 26, Ramos was elected acting president of the Union.⁵¹ On September 4 or 5 Ramos, accompanied by Attorney Jorge Farinacci, approached the acting manager of the casino, Hector Rivera Rivera,⁵² and explained to him that they had a letter addressed to Maza notifying him of Ramos' election as acting president of the Union. They had been unable to locate Maza so they gave the letter to Rivera. According to Ramos, Rivera read the letter and then put it in his pocket. Farinacci testified that Rivera took the letter⁵³ and put it into a drawer in his desk. Rivera denied that the meeting took place, and stated that he did not know of Ramos' election until September 19 or 20.⁵⁴

Whatever happened to the letter of September 5, I credit the testimony of Farinacci that he told Ramos-Acosta and Luna on September 3 that Ramos was the acting president, and I credit the testimony of Farinacci and Ramos that they told Rivera on the night of September 5 that same thing. For reasons given below I do not credit Rivera on significant issues in this case.

The significance of all this is the fact that as the result of an agreement between Tosado and the Union's first president, Ruben Ramos, the president was entitled to

work days and to have Saturdays and Sundays off. This practice was described credibly by Ruben Ramos, Jose Crespo,⁵⁵ and Felix Ramos.

Felix Ramos, moreover, had always worked days since he started at the casino in January 1977.⁵⁶ As of April 1980, after his first discharge he had Maza's promise that he could choose his own schedule and his days off. Thereafter Ramos worked for a few months on a 4 p.m. to midnight schedule with Saturdays and Sundays off. In July he requested that he change to the 12:30 to 8 schedule and retained the same days off. He returned from his vacation on September 1 to the same schedule.

Hector Rivera had been the casino's assistant manager for some 6 or 7 months before Padin's departure in August and his own elevation to the position of acting manager. As assistant manager, Rivera had charge of scheduling, casino operations, and personnel matters. He testified that in that capacity he instituted a number of schedule changes designed to assure a fair distribution of weekend days off for all employees. He also stated that he changed a number of shifts.

Respondent entered a chart into evidence to support Rivera's testimony on schedule changes. The chart shows all schedule changes including shifts and days off for the period from April 11, 1980, to November 1, 1980. I have examined this chart for the period from April 11 through September 12, 1980, which seemed to me to be the dates relevant to the issues in this case, and I find that the data contained therein do not support Rivera's testimony either that he attempted to equalize the weekend days off or that he systematically changed employees' shifts.

With respect to days off, the chart shows that as of April 4 there were four employees who had Saturdays and Sundays off. On April 11 three of those employees had their days off changed. There were only seven employees whose days off were changed to Saturdays and Sundays, and in all but two of those cases, the changes to Saturdays and Sundays were only for periods of 1 to 2 weeks. Ruben Ramos had those days off from September 5 through September 12, when his days off were changed again to Sunday and Monday. Edwin Feliciano was changed to weekend days off on May 23, then returned to Sunday and Monday on June 6. Miguel Medina enjoyed weekend days off from July 4 to 18 when he was assigned Thursday and Friday as days off. Raymond Flores had Saturdays and Sundays off from July 18 to August 1. Luis Serra was one of the three employees whose days were changed from Saturday and Sunday on April 11. His days were changed back to Saturday and Sunday on July 23 and he remained on that schedule through September 12. Miguel Barbosa was moved to a Saturday and Sunday schedule on August 22 where he remained through September 12.

These figures make it clear that there was no effort to equalize weekend days off among the croupiers. Even if

⁵⁰ Luna testified that he had checked with the security office about previous violations of rules, and the July 2 memorandum vaguely alluded to prior offenses, but I do not credit Luna and I find that prior violations of the rules by Ramos have not been established.

⁵¹ There are intimations in the record that this change in leadership was not without some internal conflict in the Union and that Crespo was contesting the change. These internal disputes are not really relevant here since Ramos had at least *de facto* title to the office he claimed. I presume that this change in leadership was the reason for the replacement of Attorney Llequis by Attorney Farinacci.

⁵² Padin had left the casino in August. Rivera was appointed acting manager at the end of August, and was named manager in September 1980. Farinacci described this incident as happening on September 5. Ramos said it was on the 4th. Other testimony indicates that Farinacci was in the casino on the 5th, so that date is more probably correct, but the discrepancy is minimal.

⁵³ Along with a copy addressed to Padin as casino manager. Farinacci also said that he notified Luna and Attorney Ramos-Acosta of the change and Ramos' election at a meeting on September 3. According to Farinacci, Ramos-Acosta told him to send a letter informing Respondent of this change.

⁵⁴ At another point in his testimony Rivera said that Ramos gave him a letter on September 14 informing him of Ramos' election.

⁵⁵ Crespo preferred to work nights, but on his accession to the presidency in November 1979 his days off were changed to Saturday and Sunday.

⁵⁶ Of the 24 names on the Union's seniority list as of November 8, 1978, Felix Ramos was number five.

one discounts four employees listed as terminated as of April 11 there were 26 employees who never had week-ends off during this April-September period. Rivera's statement that it was his "main idea for all of the employees to be able to enjoy the week-ends" is demonstrably inaccurate.

The chart shows that Rivera's further statement that he wanted to allow employees to enjoy "the most advantageous shift, which is the day shift" is similarly in error. Excluding Felix Ramos and the four employees terminated as of April 11, on April 4 there were 15 employees on the day shift, and 17 on nights. Of all these only two, Hector Lopez and Rafael Rossi, were moved from nights to days. Lopez was changed from the night shift to the day shift on April 18, but on May 9 was moved back to the night shift. Rossi was changed from nights to days on August 29. Three employees (excluding Felix Ramos) were moved from days to nights. Ariel Cortes was changed on September 5, but on September 19 he was promoted to supervisory rank. Miguel Barbosa was transferred from days to nights on April 18 but changed back to days on August 22. Fernando Paulino was transferred to a mixed day-night shift from the day shift on April 11, then to the night shift on April 18. Raymond Flores presents a unique situation. He transferred from days to nights to mixed day-night shifts a total of 7 times from April 6 to August 1. In contrast to Flores' situation, seven employees showed no changes either in their days off or their shifts during this period, and 17 additional employees kept the same shifts although their days off changed in this period.

All of this shows clearly that there was no attempt made during the time Rivera was setting the schedules for the casino employees to equalize the disadvantages of night-shift work, or to spread more equitably the advantage of weekends off.

Rivera testified that the schedule for employees was worked out by him and posted on Wednesdays for the following week or 2 weeks. In September, Rivera stated, he noticed that Felix Ramos "had been enjoying Saturdays and Sundays off with a comfortable day shift" so he determined "to place another person in order for them to enjoy that shift" and to place Felix Ramos on the night shift.

Rivera testified that he posted this schedule for Ramos on Wednesday, September 3, but Ramos stated that on Friday, September 5, Rivera came up to him at a blackjack table and told him that he was to report to the night shift on the next night, Saturday. Ramos remonstrated with Rivera, pointing out that he had already made other arrangements for the weekend; that his other job, which was known to management, made it impossible for him to work the night shift; and that both his position as acting union president and his April agreement with Maza would accord him the privilege of choosing his shift and days off. To all of this Rivera responded that there was nothing personal in it, but he, Rivera, had been "notified" about it and that Ramos had to come to work the next night.

The appearance in the English language record of this word, "notified," points up one of the real problems in extracting the meaning, particularly the nuances or shades

ings, in words which a witness has uttered in his native Spanish, indeed in an idiomatic Spanish, in response to a question which is phrased in English, then translated into Spanish. Thus I am unaware of whatever shades of meaning may reside in the Spanish word which was translated by the interpreter in this case as "notified." The word "notify" is defined in Webster's New Collegiate Dictionary, 1973 ed., G. & C. Merriam Company, Springfield, Massachusetts as "1. obs: to point out; 2. to give a notice or report the occurrence of . . . ; 3. to give formal notice to . . ." In my view, the third meaning is what Rivera meant when he told Ramos that he was "notified" that Ramos' shift and days off were to be changed. From this I can infer and I find that Rivera was notified by someone or ones higher in the hierarchy of management than he. Since at this time Rivera was at least the acting casino manager the only person higher than he in Respondent's management structure were Luna and Maza. Since I have already found that Rivera was not truthful when he asserted that he changed schedules and days off to share the benefits of weekends off and day shifts, I do not credit his statement that he alone decided to change Ramos' shift and days off so that another employee could enjoy those advantages.⁵⁷ Luna did not testify on this issue and Maza, of course, did not testify at all.

There is, then, no credible reason in this record as to why Luna or Maza "notified" Rivera to change Ramos' schedule. But I have already noted, and credited testimony that Padin had expressed to Ramos the hostility felt toward him by management on account of his treachery in testifying at this hearing in June. If management felt that way in June, it is unlikely that this hostility would have abated when Ramos again testified in support of the further allegations against Respondent at the August portion of the hearings. Moreover, Respondent was aware of the practice, agreed upon between Ruben Ramos and Tosado, of permitting the union president to pick his shifts and days off. Respondent was aware of the arrangement Maza had made with Ramos in April, and the latter's second job, and Respondent was aware, having been notified by Farinacci on September 3, of Ramos' election as acting president of the Union. In the absence of any legitimate business reason, or of any credible justification for this action, I infer and find that Ramos was reassigned on September 5 to retaliate against his further testimony at this hearing in August and his elevation to the acting presidency of the Union. This conduct constitutes a further violation of Section 8(a)(1), (3), and (4) of the Act.

While Ramos and Rivera were discussing the reassignment on the night of September 5, they were joined by Attorney Farinacci. They then agreed that Ramos would not be required to work on Saturday, September 6, but

⁵⁷ Respondent's schedule chart shows that no one was moved from nights to days in the week of September 5 or 12, or in several weeks following. Ruben Ramos who was already on the day shift had his days off changed in the week of September 5 from Tuesday and Wednesday to Saturday and Sunday, but that only lasted for 1 week, as he was changed to Sunday and Monday in the week of September 12.

would begin his new schedule on the night shift, with Tuesdays and Wednesdays off, on Sunday, September 7.

It was the practice at the casino that one employee could swap shifts with another provided that the substitute was qualified and that prior approval of management was obtained. On September 5 Ramos informed Rivera that it was impossible for him to work the late shift because of his other part-time job, but that he would change shifts with another employee, Eugenio Rosario Rexach. Rosario was equally as skilled as Ramos and Rivera accepted the swap for the 5 days beginning on September 11.

On Sunday, September 7, Ramos called another employee, Anibal Colon Hernandez, and asked him to substitute for that 1 night. Colon agreed and Ramos called Supervisor Abelardo Garcia and informed him of the substitution.⁵⁸ Colon worked that night and Ramos himself worked the night shift on Monday, September 8. Tuesday and Wednesday, September 9 and 10, were Ramos' days off under his new schedule.

On September 11, Ramos was working the day shift under his agreement with Rosario which had been approved by Rivera. About 2:30 in the afternoon Rivera told Ramos that the change that Ramos and Rosario had worked out could no longer continue because "they no longer wanted it." Who "they" were was not explained in the record, but I infer and find that, as with the change of shift, the orders to discontinue the arrangement between Ramos and Rosario came from above, either Maza or Luna.

In his testimony, Rivera asserted that he had authorized the swap between Rosario and Ramos, but only for 2 days, not for a week. Rivera did not deny the conversation with Ramos outlined in the previous paragraph, and I note that Thursday, September 11, was only the first day of the swap. Thus Rivera contradicted his own testimony, a further indication of his unreliability as a credible witness. Rosario was also informed of this decision and he worked his regular day shift on September 12.

While this incident was not alleged in the complaint as a separate and distinct violation, the matter has been fully litigated in this proceeding and Respondent is not prejudiced by a separate finding on this matter. Accordingly, I find that the decision to cancel the swap between Rosario and Ramos was made by Maza or Luna, and that the reason that decision was made was the same as the reason for the original change in shift and days off for Ramos, in retaliation for his testimony in this proceeding, and his election as acting president of the Union. I find this abrogation of the arrangement between Rosario and Ramos to be a separate and additional violation of Section 8(a)(1), (3), and (4) of the Act.

On September 12, at noon,⁵⁹ Attorney Farinacci filed the charge in Case 24-CA-4381 with the Regional Office

⁵⁸ Garcia denied that he had been notified of the substitution, but raised no objection at the time. Resolution of this credibility issue is not necessary to the resolution of the issues herein.

⁵⁹ According to the date stamp imprinted by the Board's Regional Office.

of the Board on behalf of Felix Ramos. Later that afternoon Farinacci and Ramos attended an arbitration hearing at the Commonwealth Department of Labor involving the prior discharge of an employee named Pastrana. Representing the casino at this hearing were Carlos Luna and Attorney Francisco Ramos-Acosta.

There is some conflict in the testimony of Farinacci and Ramos on the one hand, and Luna and Ramos-Acosta on the other, over what was said and done concerning the charge which had been filed earlier in the day. I do not find it necessary to resolve the questions of credibility growing out of this conflict because it is undisputed that Farinacci gave a copy of the charge to Ramos-Acosta. The latter informed Luna of the contents of the charge either by telling him orally, or by giving him a copy. Thus Respondent was aware of the matter on that afternoon.

That evening Ramos reported to the night shift at the casino. His timecard which was received in evidence shows that he punched in at 8:27 p.m.

Because of the practice in the casino of relieving croupiers as described above in connection with the incident between Padin and Ramos, it was the custom for supervisors to schedule some employees for a break at the beginning of their shift. This was done on a rotating basis so that on alternative days or nights a croupier would either begin work at the beginning of the shift, or would begin one-half hour or so after that time. On September 11 Ramos had been scheduled to begin work at the beginning of his shift. Of course it had been Rosario and not Ramos who actually worked the night shift on September 11. The supervisor in charge on September 12, Rafael Castillo Rodriguez, was aware of that, and he scheduled Ramos to begin work at the start of the night shift at 8:30 p.m. on September 12. Ramos, however, acting on his understanding of the existing practice, did not immediately report to work, but was present in the casino a short time after 8:30.⁶⁰

Between 8:30 and 8:35, according to Juan Rivera, Castillo and Ramos had a conversation close to the table where Rivera was eating. Rivera was not busy at the time. In fact he had nothing to do, and was able to give his full attention to the conversation. Castillo began by instructing Ramos to go to work because his shift had already started. Ramos answered that he did not have to begin because he had done so the previous night. Castillo then said that Ramos had not worked the previous night and to get to work.

Ramos then began to argue with Castillo, asking if there were something personal that Castillo had against him. Castillo continued to order Ramos to begin work.

⁶⁰ Ramos himself testified that he had reported to work and had a conversation with Castillo at 8:25 p.m. This is contradicted by the timecard showing that Ramos had clocked in at 8:27 and must have encountered Castillo some minutes later. Ramos' entire testimony on this incident with Castillo is defensive, contradictory, and marked by self-justification which is not warranted by the facts. While I find that Ramos' description of events later that evening is credible, I do not credit his version of the conversation with Castillo shortly after 8:30. I also had trouble with Castillo's credibility, so I have relied for the facts on this incident on the credible testimony of Juan Rivera Melendez, a cashier who works part time at the casino and is not a member of the bargaining unit here.

Ramos then began walking toward the roulette table where he was assigned, continuing to argue. He then said that if there were something personal against him the two of them could take care of it in the parking lot at 4 o'clock (when the shift ended).⁶¹ Ramos continued, saying that he was not Ta Ta⁶² and if it were something personal they could settle it themselves. Juan Rivera then cautioned Castillo not to continue the argument. Ramos went to work and the incident was over.

After this, according to Castillo, he went to the casino office and wrote a report on the incident. In fact Castillo wrote two reports. In what was identified as the first report, Castillo recited the fact that Ramos had invited him to fight at 4 a.m., and described this as a violation of the agreement and stated that Ramos was forthwith discharged.⁶³ He was instructed to report to Luna's office at 1 p.m. on Monday, September 15, for final processing.

Then Castillo wrote another letter allegedly correcting errors which appeared in the first. The second letter shows three substantive changes from the first. The words "attended the undersigned" in the first paragraph of the first letter were changed to "offended the undersigned" in the second. There is no question that this change makes the paragraph more accurate, and reflects what actually happened. However the other changes are more difficult to explain. Indeed Castillo furnished no credible explanation as to why, in the second letter, he eliminated the reference to Ramos' position as acting shop steward in the salutation, and the reference to Ramos as the "group representative" in the last paragraph. Despite extensive cross-examination, Castillo's explanation is so confused and contradictory as to be totally unconvincing.⁶⁴ Hector Rivera, the casino manager, likewise was thoroughly confused on his role in passing on these letters. Castillo said, for example, that he showed both letters to Rivera. Rivera stated that he saw only one, then identified that as the first letter. For these reasons I discredit the testimony of both Castillo and Rivera on this issue. I really can make no findings on this subject, but the logic and the inherent probabilities of the situation would indicate to me that Castillo prepared the first letter and showed it to Rivera when the latter arrived at the casino about 11:30 p.m. Rivera noted the references to Ramos as acting steward, and, knowing that Ramos was no longer acting steward, but acting president, decided to delete those references and so instructed Castillo. I cannot speculate as to the reason Rivera did not ask Castillo to include Ramos' current title.

After Hector Rivera arrived at the casino, Juan Rivera testified that Ramos approached Castillo and attempted to excuse himself, saying that he had lost his head.

⁶¹ Juan Rivera understood this remark to be an invitation to fight.

⁶² Ta Ta is the nickname of an employee named Eduardo Rivera. Ramos explained that Eduardo Rivera had been humiliated in an incident with Castillo in front of a number of people, but chose not to file a grievance or complaint about it. Ramos apparently wanted Castillo to understand that he would not supinely accept that type of manifestation of Castillo's authority. Juan Rivera testified that Ramos was excited, and was talking in a loud voice with his arms extended and waving his hands.

⁶³ The phrase used several times in this proceeding is translated as "suspended from employment and salary permanently." I think that the plain meaning of this is that the employee is discharged.

⁶⁴ The two letters were typed by a croupier named Rosalie Rodriguez, but she did not testify in this proceeding.

Hector Rivera then came up and suggested that they go to his office to discuss the matter.

In the office, according to Hector Rivera and Castillo, they went over the incident, Ramos again apologized, and Castillo told him that the "report" had already been prepared but that he would consult with Rivera and let Ramos know their decision later. Ramos testified that Castillo had misunderstood the reference to 4 a.m. and that what Ramos meant was that they had to settle personal matters after working time. Rivera then said that if they reached an agreement it was all right with him. Rivera then left and Castillo and Ramos reached an agreement that Castillo would ask Rivera to "revoke" the report. In this instance, I credit Ramos over Castillo and Rivera, and I find that the incident in the casino was forgiven by Castillo with Rivera's approval.

The night was not yet ended, however. Around 3:30 Rivera came up to Ramos and handed him the dismissal letter.⁶⁵ Rivera then told Ramos that he was not going to drop the charges because Castillo had spoken of the incident to Maza and Maza had told Castillo to go ahead with the discharge. This testimony by Felix Ramos was corroborated by Ruben Ramos who testified that he spoke with Rivera on the day after Felix Ramos was discharged, and that Rivera told Ruben Ramos that Maza had found out about the incident and "wanted to go on with the case." Ruben Ramos added that he had seen Castillo talking with Maza in the lobby of the hotel on the night of Felix Ramos' discharge.

Crediting this testimony by Felix and Ruben Ramos, I find that the confrontation in the casino had been adjusted and forgiven by Respondent through the actions of Castillo and Rivera at the 11:30 p.m. meeting in the casino office. This constituted a clear and unequivocal condonation of whatever misconduct Ramos may have committed. *N.L.R.B. v. Marshall Car Wheel and Foundry Co. of Marshall, Texas, Inc.*, 218 F.2d 409 (5th Cir. 1955); *Retail Wholesale and Department Store Union, AFL-CIO [Coca Cola Bottling Works, Inc.] v. N.L.R.B.*, 466 F.2d 380 (D.C. Cir. 1972).

After the fact of this condonation and forgiveness, Maza found out about the incident. I have already noted Maza's hostility toward Ramos as expressed in the earlier incident between Ramos and Padin. I have further found evidence of a continuation of this hostile attitude in the change of shifts and the denial to Ramos of the privilege of swapping shifts with other employees. Maza did not testify, nor did any other witness ascribe to him any reason or motive for this action. In view of this the only logical inference I can draw is that Maza ordered the discharge of Ramos, using the incident with Castillo as a pretext, because he had testified in previous phases of this hearing contrary to the interests of Respondent, and, on that very day, had filed a new charge with the Board complaining of further misconduct by Respondent. *Shattuck-Denn Mining Corporation (Iron King Branch) v. N.L.R.B.*, 362 F.2d 466 (9th Cir. 1967). I thus find that by revoking the agreement condoning the incident in the casino, and ordering the discharge of Felix Ramos on the

⁶⁵ The second of the two letters discussed above.

night of September 12, Respondent has violated Section 8(a)(1), (3), and (4) of the Act.

After handing Ramos the discharge letter in the casino at 3:30 a.m. Rivera then said that Ramos could "defend" himself at the meeting with Luna at 1 on Monday, September 15. However, Rivera stated that he never bothered to inform Luna about the situation. I find this rather hard to believe, but even harder to believe was Luna's testimony that when Castillo and Ramos came to his office Monday afternoon he knew nothing about the matter. Since this meeting is really only a postscript to the main events in this case, I need make no findings concerning it, other than to note my disbelief of the testimony of Rivera that he never notified Luna of the meeting's purpose, and Luna's denial of any knowledge of the incident in the casino on September 12. This reinforces my lack of confidence in the credibility of either Luna or Rivera.

IV. THE REMEDY

Having found that Respondent has engaged in and is engaging in certain unfair labor practices, I shall recommend that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the strike which began on December 20, 1979, was an unfair labor practice strike I shall recommend that Respondent offer Jose Crespo, Humberto Sanchez, Arnaldo Delgado, and Geraldo Rodriguez immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority and other rights and privileges, and make these employees, together with all other employees who went on strike on December 20 and 21, 1979, against Respondent's unfair labor practices, whole for any loss of earnings they suffered by reason of Respondent's unfair labor practices and the discrimination against them by payment to them of sums of money equal to that which they normally would have earned, absent the unfair labor practices and discrimination against them, including the 1979 Christmas bonus, less net earnings during such period, with interest thereon, to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).⁶⁶

I shall further recommend that Respondent offer Felix Ramos immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equal job, without prejudice to his seniority and other rights and privileges, and to make him whole for any loss of earnings suffered by him by reason of the discrimination against him in January and in September 1980 computed in the same manner as outlined in the preceding paragraph.

I shall further recommend that Respondent bargain on request with the Union, and that all references to certain disciplinary action be removed from the files maintained by Respondent concerning Felix Ramos.

⁶⁶ See, generally, *Isis Plumbing and Heating Co.*, 138 NLRB 716 (1962).

CONCLUSIONS OF LAW

1. Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn de Isla Verde is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Asociacion de Empleados del Casino del Holiday Inn de Isla Verde is a labor organization within the meaning of Section 2(5) of the Act.

3. By unilaterally discontinuing its Christmas bonus in December 1979, Respondent has violated Section 8(a)(1) and (5) of the Act.

4. By refusing to bargain about the discontinuance of the Christmas bonus Respondent has violated Section 8(a)(1) and (5) of the Act.

5. By refusing to reinstate unfair labor practice strikers, Respondent has violated Section 8(a)(1) and (3) of the Act.

6. By sending letters threatening them with reprisals for engaging in protected concerted activity, Respondent has violated Section 8(a)(1) and (3) of the Act.

7. By requiring employees to waive statutory rights in order to obtain reinstatement, Respondent has violated Section 8(a)(1) of the Act.

8. By discharging its employee, Felix Ramos, on January 26, 1980, Respondent has violated Section 8(a)(1) and (3) of the Act.

9. By denying an unpaid leave to its employee, Felix Ramos, in June 1980, Respondent has violated Section 8(a)(1), (3), and (4) of the Act.

10. By issuing a written warning to its employee, Felix Ramos, in July 1980, Respondent has violated Section 8(a)(1), (3), and (4) of the Act.

11. By changing the shift and days off of its employee, Felix Ramos, in September 1980, Respondent has violated Section 8(a)(1), (3), and (4) of the Act.

12. By denying to its employee, Felix Ramos, the right to swap shifts with other employees, Respondent has violated Section 8(a)(1), (3), and (4) of the Act.

13. By revoking an agreement to condone the conduct of its employee, Felix Ramos, on September 12, 1980, and thereby causing his discharge, Respondent has violated Section 8(a)(1), (3), and (4) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended:

ORDER⁶⁷

The Respondent, Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn de Isla Verde, Isla Verde, Puerto Rico, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain on request with the Union.

(b) Unilaterally discontinuing its Christmas bonus.

(c) Refusing to grant benefits or discontinuing existing benefits to employees because they engaged in union activities, or in concerted activities for their mutual aid or

⁶⁷ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

protection, or because they filed charges with or gave testimony to the Board under the Act.

(d) Issuing threats of discipline and warning notices to employees because they engaged in union activities, or in concerted activities for their mutual aid or protection, or because they filed charges with or gave testimony to the Board under the Act.

(e) Requiring employees to sign waivers of statutory rights in order to obtain reinstatement.

(f) Discharging or refusing to reinstate or revoking agreements to condone activities of its employees for engaging in union activities, or in concerted activities for their mutual aid or protection or because they filed charges with or gave testimony to the Board under the Act.

(g) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Upon request, bargain with the Union as the representative of employees in the following unit admitted to be appropriate:

All croupier employees of Respondent employed at its hotel, exclusive of all other employees, officer clerical employees, guards and all supervisors as defined in Section 2(11) of the Act.

(b) Offer to Jose Crespo, Humberto Sanchez, Arnaldo Delgado, Geraldo Rodriguez, and Felix Ramos immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority and other rights and privileges, and make them, together with all other

employees who engaged in an unfair labor practice strike on and after December 20, 1979, for any losses of earnings suffered by them in the manner set forth in section IV of this Decision, entitled "The Remedy."

(c) Remove from the files maintained by Respondent and concerning Felix Ramos all reference to disciplinary actions taken against him on January 26, July 2, and September 12, and September 15, 1980.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its place of business in Isla Verde, Carolina, Puerto Rico, in the English and Spanish languages, copies of the attached notice marked "Appendix."⁶⁸ Copies of said notice, on forms provided by the Regional Director for Region 24, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 24, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁶⁸ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."